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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,702	12/21/2000	Nabil Enrique Salman	8384P	9701

27752 7590 10/30/2003

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EXAMINER

TRUONG, THANH K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/745,702

Applicant(s)

SALMAN ET AL.

Examiner

Thanh K Truong

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This action is in response to applicant's amendment, Paper No. 13, received on October 3, 2003.
2. Applicant's cancellation of claims 2, 4, 5 and 11 in Paper No. 13 is acknowledged.

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "handle" that is claimed in claim 9, line 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "shape of the outlet opening and a portion of the passageway are oval or elliptical" in claim 10, lines 20-21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 3, 6-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5-8, 11, 13-16 & 18 of copending Application No. 10/010,391. Although the conflicting claims are not identical, they are not patentably distinct from each other. A side-by-side comparison of the two claimed inventions reveals a substantially same scope of invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3721

8. Claims 1, 3, and 6-10 are under 35 U.S.C. 103(a) as being unpatentable over Lecomte (6,065,272) in view of Hamilton et al. (5,662,758).

Lecomte discloses (figure 1) a portable packaging device comprising:

a body "X" ("X", "Y", "A", "B", "C", "I", "O", "P" and "W" are marked by the examiner) formed by an inner core having an inlet opening "I" and an outlet "O" opening, and a passageway there between for passing there through an article to be packaged;

a casing "Y" comprising a surrounding casing wall, and a base wall "B" that joins an end of the surrounding casing wall to the body, the body and the casing defining a storage space "C" and a dispensing opening at the inlet end, wherein the device can retain a length 3 of the flexible tubular sheet within the storage space, wherein the tubular sheet are dispensed through the dispensing opening and into the inlet opening of the inner core, the article to be packaged are inserted through the inlet opening and inside the tubular sheet and the tubular sheet are gathered and closed at each end to form a closed packaged article "P", and

a means 5 for separating the closed packaged article from a trailing portion of the tubular sheet, to remove the closed individually packaged article through the outlet opening (column 5, lines 20-24). Furthermore, Lecomte disclosure (column 3, lines 63-67) implies that the separating means comprises a cutting blade that capable of cutting through a trailing portion of the tubular film. Moreover, combination of a sealing and a cutting blade for sealing and cutting tubular bag is well known practice in the art.

Lecomte further discloses a cutting means 5 positioned adjacent the outlet opening "O" of the inner core (figure 1), and a cap "A" covering at least a portion of the dispensing opening for retaining the length of non-resilient flexible tubular sheet.

9. Lecomte discloses the claimed invention, but does not expressly disclose that the tubular sheet comprises the adhesive material.

Hamilton discloses a flexible film having pressure sensitive adhesive protected from inadvertent adherence (abstract); the flexible film having a recessed pressure sensitive adhesive and collapsible protrusions (three-dimensional film) which serve as stand-off to prevent premature sticking to wide variety of rigid and resilient target surfaces, wherein the collapsible protrusions are small and closely spaced for releasable sealing of the composite material to such surfaces or even to itself (column 3, lines 20-26).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Lecomte's tubular sheet by applying the flexible film with adhesive as taught by Hamilton providing a flexible material having pressure sensitive adhesive that is protected from inadvertent adherence to other surfaces.

10. The modified Lecomte discloses the claimed invention, but does not expressly disclose the handle and that the shape of the outlet opening and a portion of the passageway are oval.

It would have been an obvious matter of design choice to add a handle to the portable packaging device and to make the outlet opening and a portion of the passageway in an oval shape.

Since Applicant's disclosure admitted that the handle is an optional feature of the claimed invention (page 15, lines 9-10), therefore, the apparatus of the present invention would perform equally well without the handle.

Similarly, Applicant submitted that the shape of either or both the inlet and outlet opening can be circular, or oval (page 4, lines 14-16), therefore, the apparatus of the present invention would perform equally well with the outlet opening of a circular shape.

For the reasons mentioned above, the handle and the oval shape outlet opening would have been an obvious variation of the present invention.

11. Claims 1, 3 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richards et al. (4,869,049) in view of Hamilton et al. (5,662,758).

Richards discloses an apparatus comprising: a body formed by an inner core having an inlet opening and an outlet opening and a passageway there between (figures 1, 4 & 5); a casing 1 comprising a surrounding casing wall, a storage space to retain a length of the flexible tubular sheet 2 within the storage space; the tubular sheet is gathered and closed at each end to form a closed packaged article 35 (figure 1); a means 61 for separating the closed packaged article; and the cutting blade 64.

Richards further discloses the article to be packaged is a waste-filled disposable absorbent article (column 2, lines 42-44); a cap 31 and a handle 68.

Richards discloses the claimed invention, but does not expressly disclose that the tubular sheet comprises the adhesive material.

Hamilton discloses a flexible film having pressure sensitive adhesive protected from inadvertent adherence (abstract); the flexible film having a recessed pressure sensitive adhesive and collapsible protrusions (three-dimensional film) which serve as stand-off to prevent premature sticking to wide variety of rigid and resilient target surfaces, wherein the collapsible protrusions are small and closely spaced for releasable sealing of the composite material to such surfaces or even to itself (column 3, lines 20-26).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Richards' tubular sheet by applying the flexible film with adhesive as taught by Hamilton providing a flexible material having pressure sensitive adhesive that is protected from inadvertent adherence to other surfaces.

Regarding to claim 10, the modified Richards discloses the claimed invention, but does not expressly disclose that the shape of the outlet opening and a portion of the passageway are oval.

It would have been an obvious matter of design choice to make the outlet opening and a portion of the passageway in an oval shape.

Since Applicant's disclosure submitted that the shape of either or both the inlet and outlet opening can be circular, or oval (page 4, lines 14-16), therefore, the apparatus of the present invention would perform equally well with the outlet opening of

Art Unit: 3721

a circular shape. Thus, the oval shape outlet opening would have been an obvious variation of the present invention.

***Response to Arguments***

12. Applicant's arguments filed October 3, 2003 have been fully considered but they are not persuasive.

13. In response to the Applicant's argument that there is no reason to combine Lecomte and Hamilton, the examiner disagrees.

Applicant claimed invention is an apparatus claim; the tubular sheet does not set forth any structure limitation to the apparatus claim. The flexible tubular sheet is a work piece that is being used with the apparatus, thus, it is not being considered as a structure limitation of the claim.

Lecomte's apparatus can be used with varieties of flexible tubular sheet materials including the material disclosed by Hamilton. Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

14. In response to the Applicant's argument that the Office Action has failed to establish a prima face case of obviousness in regarding to the "handle" and "oval shape" rejections, the examiner disagrees. Since Applicant's disclosure admitted that the handle is an optional feature of the claimed invention (page 15, lines 9-10), therefore, the apparatus of the present invention would perform equally well without the handle.

Similarly, Applicant submitted that the shape of either or both the inlet and outlet opening can be circular, or oval (page 4, lines 14-16), therefore, the apparatus of the present invention would perform equally well with the outlet opening of a circular shape.

For the reasons mentioned above, the handle and the oval shape outlet opening would have been an obvious variation of the present invention.

15. Applicant's argument regarding to Couper in view of Shiotari have been considered but is moot in view of the new ground of rejection.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal line extending to the right.

tkr  
October 23, 2003

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700